

May 12, 2005

Michael H. Krausnick  
County Counsel  
Stanislaus County Counsel  
1010 10<sup>th</sup> Street, Suite 6400  
Modesto, CA 95354

**Re: Your Request for Advice  
Our File No. A-05-085**

Dear Mr. Krausnick:

This letter is in response to your request for advice on behalf of Stanislaus County Chief Deputy Auditor Controller Kim Groesbeck for advice regarding the gift provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### **QUESTION**

Is a computer won in a random drawing by Ms. Groesbeck disclosable as a gift or income on the Form 700?

### **CONCLUSION**

As long as the raffle was open to all persons attending the event, and the event was open to the public, this would be a “bona fide competition.” If so, the raffle prize must be reported as *income* at its fair market value on Chief Deputy Auditor Controller Kim Groesbeck’s next annual statement of economic interests.

### **FACTS**

On April 19, 2005, the Modesto Chamber of Commerce, a not-for profit 501(c)(6) organization was the host sponsor for the “Connecting Stanislaus 2005 Business Meets Technology Fair.” There were many sponsors including the County of Stanislaus and City of Modesto. The public was invited to attend as were county and city employees. A

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

random drawing for prizes was available to any attendee who filled in the anonymous feedback survey. Various prizes were donated to the Chamber of Commerce by vendors/sponsors for this drawing. Neither the survey nor the number tickets used in the drawing asked for any personal information that would identify the attendee. The attendee had to be present to win.

Kim Groesbeck, the Chief Deputy Auditor Controller for the County of Stanislaus, filled out the survey, received her ticket, left the trade fair and later returned. Her ticket was drawn during the random drawing when she was present the second time. She won a computer (worth more than \$360) that had been donated by sponsor Dell Computer. This employee annually files a statement of economic interests or Form 700 under the county conflict of interest code at level I (full disclosure).

## ANALYSIS

A gift is defined under Section 82028(a) as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

However, there are exceptions to the definition of a gift.<sup>2</sup> One such exception occurs when a prize or award is given in a “bona fide competition.” (Regulation 18946.5, copy enclosed) Commission regulation 18946.5 provides:

“A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient’s status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income.”

If a prize is considered income, the amount the official may accept is not constrained by the gift limits to the Act. (*Smith* Advice Letter, No. A-94-356.)

In order for a prize to fit within this exception, it may not be “related to the recipient’s status as an official or candidate.” (Regulation 18946.5) One of the main factors in making this determination is the nature of the pool of contestants in the competition.

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<sup>2</sup> The term “gift” does not include gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes. (Section 82028(b)(2).) Also note that if the recipient reimburses the donor or the donor’s intermediary within 30 days of receipt or acceptance of a gift, the value of the gift is reduced by the amount of the reimbursement, and the amount of any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement. (Regulation 18943(a)(4).)

In the *Burns* Advice Letter, No. A-96-324, we advised that where the contest was open to the public and included both public officials and other persons who were not public officials, a prize awarded to a public official in a random drawing was not a gift.

Similarly, in the *Nemeroff* Advice Letter, No. A-99-148, we advised that a raffle was not related to a contestant's status as a public official where the contest was open to all, but included state legislators, legislative staff, exempt appointees, and state civil service employees.

Therefore, as long as the drawing was open to members of the public and the feedback survey (which made persons eligible for the raffle) was available to all persons who attended the event, including both public officials and persons not subject to the Act, the competition would not be related to the recipient's status as an official. In addition, if the raffle is conducted in such a manner that the winning ticket holder is determined by chance, the raffle is a "bona fide competition." (*Nemeroff*, supra., *Allen* Advice Letter, No. A-95-148.)

According to your facts, it appears that the raffle prize, a computer, was won in a bona fide competition<sup>3</sup> not related to Ms. Groesbeck's status as an official or candidate. Pursuant to regulation 18946.5 "[a] prize or award which is not reported as a gift shall be reported as income."

Thus, Chief Deputy Auditor Controller, Kim Groesbeck, must report the value of the computer on her next annual statement of economic interests if its value is \$500 or more (section 87207).

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: Emelyn Rodriguez  
Counsel, Legal Division

Enclosure  
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<sup>3</sup> Please note that we are only advising that the raffle is considered a "bona fide competition" under the Act. We are not advising as to the legality of the raffle, to which other laws may apply.